JENNICO ASSOCIATES SDN BHD

v.

LILIAN THERERA DE COSTA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[ORIGINATING MOTION NO: R2-25-23-1997]
9 FEBRUARY 1998

ADMINISTRATIVE LAW: *Judicial review - Industrial Court - Decision of - Whether findings based on error of law and fact - Whether certiorari should be granted*

LABOUR LAW: *Industrial Court - Evidence - Burden of proof - Sexual offences - Whether onus on complainant to prove occurence of incidents - Whether Industrial Court had shifted onus onto other party - Whether tantamount to error of law*

LABOUR LAW: *Industrial Court - Evidence - Standard of proof - Sexual offences - Whether on a balance of probabilities*

LABOUR LAW: *Industrial Court - Corroboration - Sexual offence - Whether court can decide on uncorroborated evidence - Whether Industrial Court had warned itself of dangers of deciding on uncorroborated evidence*

LABOUR LAW: *Industrial Court - Corroboration - Sexual offence - Time factor - Whether incidents were communicated to witnesses at or about time of its occurance - Whether delay in doing so destroys probative value of such evidence*

The applicant ('Jennico') was in the process of opening a new hotel. It appointed one Major Zulkifli ('Zulkifli') as its managing director to put together a team to achieve this purpose. The 1st respondent ('Lilian') was appointed by Zulkifli as the director of operations.

Zulkifli had weekly meetings with the respective heads of departments. They, including Lilian, were reprimanded when traces of inefficiency were illustrated.

About three months later, Lilian tendered her resignation, and in the letter conveyed feelings of gratitude to the staff. However, a week after that, Lilian sued Jennico for unfair dismissal.

Before the Industrial Court ('the second respondent'), Lilian alleged that she had been sexually harassed by Zulkifli on two occasions. The first incident was alleged to have occurred at around 1pm on 31 December 1993 and the second, about 5.20pm on 7 February 1994. Further, that he had constantly harassed her by unjustifiably finding fault with her work thereby compelling her to resign. The second respondent upheld Lilian's claim on constructive dismissal based on the aforesaid allegations (see [1996] 2 ILR 1765).

The following points were ventilated in the hearing before the second respondent: The alleged incidents occurred in the presence of Lilian and Zulkifli only. Lilian did not lodge a police report but instead informed her friends. Regarding the second incident, Lilian had informed her husband, Jerome Chai, and her friend Jacqueline Toh, more than two weeks after it allegedly occurred. Lilian did not inform her husband as she was afraid that he would react rashly towards it out of anger. Lilian also stated that she had been at home all night on the day of the alleged second incident. However, evidence was adduced to show that she had been in the vicinity of the Ming Court Hotel with her brother and some friends. Lilian and her husband were also alleged to have attempted to bribe one Simon Innasimuthu ('Simon'), a witness at the hearing in the Industrial Court, to testify in her favour.

The applicant then applied to the instant court to quash the decision of the second respondent on the following grounds: (1) that the second respondent had erred in law and jurisdiction when it purported to shift the onus of proof to Jennico based on Lilian's evidence in chief; (2) that the second respondent had failed to consider relevant matters which arose from the cross examination of Lilian and of her intended corroborating witnesses which could only be consistent with the greater probability of Zulkifli's evidence; (3) that the second respondent had failed to consider that the failure to cross examine Simon left a material evidential gap in Lilian's case particularly in relation to the second incident; (4) that the second respondent had failed to take into account relevant matters but had considered irrelevant matters when it received self-corroborating evidence. That it failed to consider that instead of corroborating Lilian's version of events in material particulars, the evidence actually contradicted Lilian's case in material particulars; (5) that, having discovered that the evidence of Jerome Chai and Jacqueline Toh were not made "at or about the time" of the incidents and that the said testimonies were self-corroborating in nature, the second respondent had allowed the said witnesses to proceed with a highly prejudicial breed of evidence; and (6) that the second respondent's conclusion that the claimant had proven her allegations of sexual harassment was unsupported by any rationally probative fact or substance. Further, that this conclusion was, at best, speculative and uncorroborated.

Held:

[1] Following the recent Federal Court decision in *R Rama Chandran*, the decision of the second respondent had to be examined with scrutiny as the decision was based on an allegation of sexual harassment which could cause enormous embarrassment and damage to Zulkifli's social status.

[2] An allegation of sexual harassment must be adequately corroborated. To rely on the uncorroborated evidence of a complainant alone will be very dangerous.

[3] The evidence of a complainant in a sexual case is quite similar to that of an accomplice. Thus, the principle that the court must warn itself of the dangers of securing a conviction without corroboration should also apply in relation to the two sexual allegations made by Lilian. This, the second respondent did not do as was evident from its written grounds of judgment. The court could not use evidence adduced by the other side to corroborate the claimant's allegations.

[4] In industrial matters, the standard of proof is on a balance of probabilities but the burden of proof remains on the sexual complainant.

[5] The first incident had not been corroborated by Lilian. The fact that she had not informed her husband was an unusual act. Her testimony that she informed Jacqueline Toh the next day was untrue as Jacqueline Toh testified that she was only informed of it in late February 1994. Also, Jennico's witness also testified that Lilian was in a jovial mood at around 3pm on the day of the alleged first incident.

[6] On the second alleged incident, it was found that Lilian did not lodge a police report nor did she inform her husband about it immediately after it had occured. Her reason for refusing to do the latter was unacceptable. Such acts gave rise to a lot of suspicion.

[7] Jacqueline Toh and Jerome Chai were informed about the incident after a long period of time. This meant that their testimonies were not made "at or about the time" of the incident; such self-corroborating evidence should not be allowed as it had lost its probative value.

[8] The evidence adduced created great doubts in the evidence of the claimant and certainly required corroborative evidence. It was inconceivable for the second respondent to arrive at such a finding. There was inconclusive evidence to prove that Lilian had been sexually harassed merely on her uncorroborated evidence which in itself was riddled with contradictions.

[9] Lilian had also lied as to her whereabouts at night on the day of the alleged second incident. Instead of being at home as claimed, she was found to be having fun at the Ming Court Hotel. Such being the nature of Lilian's evidence, it would have been proper for the second respondent to have her evidence corroborated as she had proved to be an unreliable witness.

[10] Lilian and her husband had attempted to bribe Simon. This act would have certainly destroyed her credibility and that of all other witnesses involved.

[11] Lilian only stayed with the company for three months. In all probabilities, she had resigned because she could not cope with the pressure as she did not posses the necessary initiative, imagination and experience to carry out the duties and responsibilities as a director of operations.

[Certiorari granted; decision of Industrial Court quashed.]

Cases referred to:
Dalip Bhagwan Singh v. Public Prosecutor [1997] 4 CLJ 645 ***(refd)***
Jennico Industries v. Lilian Therera De Costa [1996] 2 ILR 1765 ***(refd)***
R Rama Chandran v. Industrial Court of Malaysia [1997] 1 CLJ 147 ***(foll)***

For the applicant - VT Nathan (Mr Rutheran with him); M/s Shearn Delamore & Co
For the 1st respondent - M Puravalen; M/s Kumar Jaspal Aishah & Quah

Reported by Bhawani Mano

JUDGMENT

Azmel Maamor J:

This is an application for an order of *certiorari* to quash the Award of the Industrial Court No. 606 of 1996 dated 30 December 1996. ([1996] 2 ILR 1765).

The brief facts of the case are as follows. Some time in 1993 the applicant was in the process of making the necessary preparation towards the commencement of a business of operating a hotel known as Mint Hotel situated near the Sungei Besi toll of the Lebuhraya Utara Selatan. Towards this end the applicant had appointed Major (R) Zulkifli Mokti (COW3) as the Managing Director of the said Hotel. To assist him in achieving the objective, Major Zulkifli, in the preparatory stages, appointed a few personnels as Directors to be in charge of certain portfolios. One of those personnels

appointed was the 1st respondent/claimant. She was appointed with effect from 8 November 1993 *vide* a letter of appointment dated 29 October 1993. Major Zulkifli had earlier known the claimant as both Major Zulkifli and the claimant had been working together in a hotel in Ipoh where the claimant had held the post of a Front Desk Manager for a number of years. It was with such acquaintance that Major Zulkifli in appointing her, hoped that the claimant would be made the first lady General manager of a hotel in Malaysia. In the preparatory and planning stages the claimant was made the Director of Operations and in that capacity she was responsible to carry out certain duties such as:

(i) Layout of storage – bar and lounges;

(ii) Furniture fittings and equipment;

(iii) Kitchen cost estimation; and

(iv) Staff requirements.

As this was still in the pre-operational stage which required serious planning, needless to say that everyone in the committee must have the necessary imagination, initiative and experience in order to carry out the duties in his/her respective portfolios effectively. Weekly meetings were conducted and chaired by Major Zulkifli to check what progress had been made by each of the Directors. Quite aptly Major Zulkifli would comment of matters not satisfactorily or improperly carried out by any of the Directors. The claimant was not an exception to receive such comments as regard the progress of her part of the work. Hence not long after her appointment, the claimant tendered her resignation on 22 February 1994 by giving two weeks notice. In her letter she also thanked the management and staff during her employment there. However on 9 March 1994 she wrote a letter to the applicant stating that she had been constructively dismissed from her job on the grounds of sexual harassment and unfair labour practice. She then made representation to the Minister who then referred the matter to the Industrial Court for an Award.

The following allegations were made by the claimant against the applicant:

1. That on 31 December 1993 at about 1pm when she entered Major Zulkifli's office to wish him Happy New Year, he, as an employee of the applicant, kissed her across the table.

2. That on 7 February 1994 at about 5.20pm, in the office of Major Zulkifli, Major Zulkifli made verbal remarks to her to the effect "You are very beautiful, I wish I can make you my second wife." and Major Zulkifli molested her from behind as she went to the pantry to get a glass of water.

3. That Major Zulkifli harassed her and constantly found fault with her work and on 22 February 1994 asked her to resign and as a result she did resign.

At the inquiry before the Industrial Court the claimant called five witnesses. Apart from herself she also called her husband, her brother, Mr. Hardeep Singh, her very close friend whom she met at a nightclub and Jacqueline Toh Siew Kun, a former colleague of the claimant. The applicant called four witnesses, namely Major Zulkifli, Cheong Mun Yuen, the Secretary and Personal Assistant to Major Zulkifli, Mr. Simon Innasimuthu, the former Finance Director of the applicant and Roshidi Shamsuddin, a bank officer.

At the conclusion of the inquiry the Industrial Court handed down a 62 page Award where it held that "the claimant had been constructively dismissed and that such dismissal was without just cause and excuse. Alternatively, the court holds that the claimant has succeeded in establishing a case of forced resignation which was also without just cause or excuse." It is on this Award that the applicant had made this application before this High Court to quash the award of the Industrial Court and raised six grounds of errors of law committed by the Industrial Court, namely:

1. The Industrial Court erred in law and exceeded its jurisdiction when it purported to shift the onus of proof to the applicant based on the claimant's evidence in chief.

2. The Industrial Court failed to consider all relevant and germane matters which arose from the cross-examination of the claimant and that of her intended corroborating witnesses which could only be consistent and compatible with the greater probability of Major Zulkifli's innocence.

3. The Industrial Court failed to consider that the failure to cross-examine Mr. Inassimuthu left a material evidential gap in her case in particular with regard to 7 February 1994 incident.

4. The Industrial Court failed to take into consideration relevant matters and considered irrelevant matters when it received self-corroborating evidence, whilst failing to consider that instead of corroborating the claimant's version of events in material particular, it instead contradicted the claimant's case in material particulars.

5. Having discovered that the evidence of Jacqueline Toh and Jerome Chai were not made "at or about the time" of the incident and that the said testimonies were self-corroborating in nature the Industrial Court still allowed the said witnesses to proceed with a highly prejudicial breed of evidence.

6. The Industrial Court's eventual conclusion that the claimant had proven her allegations of sexual harassment was unsupported by any "rationally probative basis in fact" or "substance." The Industrial Court reached its conclusion on the basis that it was at best "speculative" and "uncorroborated."

The law as regards the right of the High Court to exercise its powers in a judicial review case has been succinctly explained in the recent Federal Court case of *R. Rama Chandran v. Industrial Court of Malaysia* [1997] 1 CLJ 147 where Edgar Joseph Jr. FCJ said:

> I would refer to *Bugdaycay v. Secretary of State for the Home Department London Borough Council* [1987] 1 All ER 940 (HL) where Lord Bridge stated that Courts are entitled within limits:
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> > To submit to an administrative decision to a more vigorous examination to ensure that it is in no way flawed, according to the gravity of the issue which the decision determines. The most fundamental of all human rights is the individual's rights to life and when an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny.
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> I would say that in reviewing the award of the Industrial Court for substance and not just process, we were amply supported by the reasoning and the authorities cited above and, that therefore, there was a legal basis for us to have done so.

It is on the basis of the above decision of the Federal Court that I decided to examine with scrutiny the substance of the Award of the Industrial Court because the dismissal was based on the alleged sexual harassment made against the claimant by the applicant's Managing Director, Major Zulkifli, an allegation which could cause enormous embarrassment and damage on the social status of Major Zulkifli. As quite rightly pointed out by the Industrial Court in its Award that an allegation of sexual harassment must be adequately corroborated. To rely on the uncorroborated evidence of the complainant alone would be very dangerous to the extent that it would not be prudent to convict merely on an uncorroborated evidence of the complainant. Therefore the evidence of a complainant in a sexual case is quite similar to that of an accomplice. While it would not be unlawful to convict merely on the evidence of an accomplice it is imperative for the court to warn itself of the dangers of convicting an accused person merely on the uncorroborated evidence of an accomplice. In the recent decision of the Federal Court Peh Swee Chin FCJ in the case of *Dalip Bhagwan Singh v. Public Prosecuto*r [1997] 4 CLJ 645 made a ruling that it would not be sufficient for the court merely to warn itself of the dangers of convicting an accused on an uncorroborated evidence of an accomplice. The

court must give reasonable grounds why it was safe in such circumstances to convict on the uncorroborated evidence of an accomplice. Such was the rigorous requirement for the court need to do before it can convict on an uncorroborated evidence of an accomplice. And the same principle should apply in the case of the uncorroborated evidence of a complainant in a sexual offence. On the basis of the above decision of the Federal Court such stringent requirement should also apply in the two sexual allegations made by the complainant in this case. The only difference between this case and a normal criminal sexual charge is that in this case the standard of proof required for the claimant to prove is on a balance of probabilities whereas in a criminal charge the standard of proof is on a beyond reasonable doubt. But the onus of proof does not shift. The onus shall always be on the claimant to prove such allegations on a balance of probabilities relying on her own evidence and other witnesses and documents. Any evidence adduced from the respondent side cannot be used to corroborate the allegation of the complainant.

I shall now examine the two sexual harassment allegations by the complainant against the applicant's Managing Director, Major Zulkifli. As to the first sexual allegation she said the following in her testimony before the Industrial Court:

> On that day on 31 December 1993 we were given half a day off. I went around everyone in the office to wish them Happy New year. I went to Major Zulkifli's office. There was no one else present. It was just before 1 o'clock lunch. He was across the table and I was just in front. I extended my hand to greet him and to wish him Happy New Year. He just pulled me to him and gave me a kiss on the lips. He leaned forward and pulled me suddenly to him. I told him "Please ever don't do that again." He said "Well, you know, it is New Year O.K. I won't do it again."
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> Feeling quite frightened I took my bag and left. I did not inform anyone in the office. I just did not as I was too embarrassed and shocked. On my return home, I did not inform my husband. I did inform a friend the next day. Her name is Miss Jacqueline Toh.

As can be seen from the above testimony and also from the entire notes of evidence before the Industrial Court there was no corroboration to her allegation of this incident. Her not informing her husband when she returned home was an unusual act. Her testimony that she informed Jacqueline Toh the next day was not true because Jacqueline Toh in her evidence stated that she was informed by the complainant in late February 1994. Further, on the evidence of COW1 – Cheong Mun Yuen, the claimant left the office not at 1pm but at 3pm and just before she left the office she was in jovial mood wishing people Happy New Year. Such evidence would create great doubts in the evidence of the claimant and as such would certainly require

corroborative evidence as its truthfulness was questionable. In the circumstances it was highly inconceivable for the Industrial Court to arrive at a finding that there was sufficient evidence that the claimant had been sexually harassed by Major Zulkifli on 31 December 1993, merely on the uncorroborated evidence of the claimant which evidence had been riddled with contradictions not only by the applicant's witnesses but also by the claimant's own witnesses. In such circumstances it would be gravely unsafe to arrive at such a finding. In my reading of the Award I was unable to find anywhere that the Industrial Court had warned itself on the uncorroborated evidence of the claimant. In any case this is certainly not a case where such warning could appropriately be made in the light of the several serious contradictions in the evidence of the claimant. In my view the decision of the Industrial Court in respect of the 1st sexual allegation holding that the claimant had proved her case merely on her uncorroborated evidence when her evidence was riddled with serious contradictions and inconsistencies, was a serious error of law.

With that I now consider the second sexual harassment alleged to have been committed on 7 February 1994. The testimony of the claimant on this allegation is as follows:

> On 7.2.1994 everyone else had gone home. The last person to go at 5.15pm to 5.20pm was Mr. Simon Innasimuthu. As he was leaving I was called to the Conference Room by Major Zulkifli to discuss about the hotel's architectural plans. I sat down at the Conference Room's table.
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> My mind was clear. I thought it was work. Since there was still Simon around, Major Zulkifli did discuss the hotel plans in the Conference Room. As Simon was leaving Major Zulkifli said "Simon, please make sure you lock the door." Simon said "OK". Major Zulkifli repeated to Simon "Make sure it is locked." After Simon left, Major Zulkifli started saying things like "You are very beautiful, I wish I can make you my second wife." I said "Please stop talking about such things. You asked to talk about hotel plans." I was getting frightened. I left the Conference Room to go to the pantry which was about 8 feet away to get a glass of water.
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> Major Zulkifli followed me. Suddenly he grabbed me from behind and started to molest me from behind. He put his arm around my waist and moved his arms around me. He started moving his hand around my breasts with both his hand. He then turned me round. I tried pushing him away. I could not as he was stronger. He started kissing me on the neck and towards my face. I said "stop it". I managed to put my glass down and I ran towards my office. I took my things and left.

> I went to the car. I was very shaken. I had to get out. I did not know where to go as I was embarassed. The only person I could think of was a friend of mine. My husband was not at home. I went to see my friend called Mr. Hardeep in his house. I related the whole story to him.

Similar to the first allegation of sexual harassment this second allegation was committed in the absence of any other persons. Nonetheless the Industrial Court arrived at the finding that claimant had proved her case. The question that this court need to consider is whether, on the evidence adduced, the Industrial Court was correct in law to arrive at the finding it did. To do so the first issue that need to be determined was whether the evidence of the claimant on this allegation was free of all material contradictions. And this exercise must be viewed not only from the evidence adduced by the claimant but also by those witnesses of the applicant.

To begin with it was the evidence of the claimant that she did not lodge any police report against the acts of sexual harassments of Major Zulkifli though allegedly advised to by her friend Hardeep. What was even more intriguing was that she did not inform her husband about this incident though Hardeep allegedly advised her to do so. She only informed him after she tendered her letter of resignation on 22 February 1994. Normally, faced with such incident, one would at the first opportunity communicate with one's husband, either personally or through phone and would also lodge a police report. These are acts consistent with truth. Not informing one's husband or failure to inform the actual incident to him are acts which can give rise to a lot of suspicion. Of all persons she went to the house of an unmarried man whom she had met at a night club about 1½ to 2 years before; even though she had a husband and a brother with whom she could easily communicate. Her reasons for not immediately informing her husband was because she was afraid that he might do something out of anger. I do not find such a reason acceptable. If it was true that she was really angry with Major Zulkifli for the acts he had done to her, the complainant certainly would want her husband to do something to Major Zulkifli. Yet when she did not go for work the next day she told her husband that she wanted to resign and the husband thought that she could not cope up with her work. For all we know what she told the husband could be the truth.

Furthermore, under cross-examination when asked where she was on the night of 7 February 1994 she categorically replied "I was at home the whole night." She also denied partying away at the Ming Court Hotel on the night in question. However she eventually had to admit having gone out and been at the vicinity of the Ming Court car park on the night in question when the counsel for the applicant produced a Police Report lodged by her on the night

in question regarding a fight between her brother, Ronald Anthony de Costa and a group of men from the Ming Court Hotel. The incident took place at about 11.45pm at the Ming Court Hotel car park. In my view the answers she gave under cross-examination as to her whereabouts on the night of 7 February 1994 indicated quite clearly that she was not a truthful witness. She originally claimed that she was at home all the time on the night in question. If that was true then such act would be consistent with the fact that she was a very confused and frightened person after the alleged incident on the evening of 7 February 1994. But from the report she lodged relating the incident at the Ming Court Hotel clearly indicated that she was not at home on the night in question. What other conclusion can be derived apart from the high probability that she and her brother were partying away at the Ming Court Hotel. Such being the case the claimant was not a confused and frightened person as she claimed to be on 7 February 1994. On the contrary she was having fun. Such being nature of the evidence of the claimant it automatically triggers off the need to have her evidence corroborated as she has proved to be an unreliable witness.

But that is not all. There was the evidence of the applicant's witnesses as well. The evidence of COW2 – Cheong Mun Yuen stated that Major Zulkifli left the office at 5pm on 7 February 1994 in order to be in time to fetch his wife at home to go to a Tahlil prayer. As such the incident that alleged to have taken place between 5.20 and 5.25pm as alleged by the claimant could not be true. There was also the evidence of Simon Innasimuthu who stated that the claimant together with her husband had approached him and offered to give 25% of the claim she would obtain in her case against the applicant if Simon agreed to give evidence in favour of the claimant. The act on the part of the claimant and her husband in attempting to bribe Simon Innasimuthu would certainly shatter the credibility of the claimant and all other witnesses involved in such acts. All these are material facts which the Industrial Court should have taken into consideration in judging the credibility of witnesses. But the Industrial Court had failed to consider them. Such failures would therefore tantamount to a serious error of law in accordance with the principle as stated in the Federal Court case of *R. Rama Chandran* above cited.

While still on the issue of the second allegation of sexual harassment I would also wish to consider the evidence of two of the claimant's witnesses, namely the claimant's husband, Jerome Chai (CLW2) and Jacqueline Toh. In so far as 7 February 1994 incident is concerned Jerome Chai was only informed of it by the claimant on 22 February 1994 the day she tendered her letter of resignation. And as regard the testimony of Jacqueline Toh she admitted in her evidence that the claimant only informed her of the incident of 7 February 1994 sometime in the end of the month of February 1994. The testimonies

of the said two witnesses on this issue are not evidence made "at or about the time" of the incident and such self-corroborating evidence should not be allowed as it lost its probative value. The Industrial Court had failed to rule that such testimonies should be ignored. And by failing to do so the Industrial Court again committed another serious error of law.

From the above circumstances the following findings were arrived:

(1) There were no corroboration of the testimony of the claimant in respect of each of the 2 allegations of sexual harassment;

(2) It would be unsafe to rely on the uncorroborated evidence of the claimant in the light of numerous material contradictions found in her evidence in respect of each of the two allegations;

(3) Even assuming that there was sufficient evidence to support the 2 allegations on the testimony of the claimant it would be the duty of the Industrial Court to warn itself of the danger of making a finding on the uncorroborated evidence of the claimant and must furnish reasons for doing so. This the Industrial Court had failed to do.

As such the Industrial Court had committed serious errors of law in making such Award in respect of the said two (2) allegations of sexual harassment against the applicant's Managing Director, Major Zulkifli.

I now come to the third allegation. Legally speaking, after having found that credibility of the testimony of the claimant had been proven to be seriously unreliable due to the presence of numerous inconsistencies and contradictions in her evidence the third allegation could no longer stand because the basis of the third allegation hinges on the allegation of the two incidents of sexual harassments. On this reason alone the allegation could be dismissed. Be that as it may I proceeded to consider the merits of the third allegation.

The claimant alleged that after she came back to work on 14 February 1994 the applicant's Managing Director verbally harassed her in that he constantly found fault with her work. Finally on 22 February 1994 the claimant alleged that Major Zulkifli called her to his room and told her that he didn't like her face any more and wanted her to resign. So she tendered her resignation letter on that day.

The first matter to be considered was the alleged verbal harassment made by Major Zulkifli on her work. In what manner did he find fault with her work. The particulars of such harassment were not stated. Nonetheless the question to be asked was whether she was capable of discharging her duties as the Director of Operations of the said hotel. As had been mentioned in the brief

facts earlier the claimant's experience in hotel management was only as a Front Desk Manager the duties of which were very much inferior to the heavier and greater task of Director of Operations of the said hotel which at that time was still in its planning stages of development. As also have been mentioned such responsibility would require imagination, initiative and experience. The claimant possessed none of these requirements except years of experience as a Front Desk Manager. It was admitted in evidence that she hesitated to take up this new appointment as she was unsure whether she could cope up with the higher responsibilities. Yet due to the prospect of a bigger salary she decided to give it a try especially so when her husband was jobless. She commenced the new job on 8 November 1993. It is common knowledge that during the initial period commencing a new job with responsibilities which had never before carried out, one would normally feel very uncertain. Fears of being unable to meet the grade keeps on harping one's mind. Normally, only after a period of six months would one be able to settle down, after which one would be able to graft and familiar with the new responsibilities. Before that period the feeling of discomfort and uncertainty will continue to trouble the mind. That appeared to be the probable state of mind of the claimant who had only worked with the applicant barely three months. Such was the evidence of Major Zulkifli, the Chief Executive Officer to whom the claimant directly reported. She was slow in her work, failed to attend to certain assignments and on several occasions waited to be told what to do and what not to do. This clearly indicated that she did not know what need to be done. In other words she did not possess the necessary initiatives, imagination and experience to carry out the duties of the Director of Operations of the said hotel which at time was still in the planning stages. That being the situation her resignation on 22 February 1994 would be more probable due to her inability to carry out her duties and responsibilities as the Director of Operation than what she alleged it to be. The tone of her letter of resignation dated 22 February 1994 lent support to such conclusion. That letter was written contemporaneously. In her letter she thanked the "management and the staff." The tone of her letter was not consistent with being angry with the Managing Director. If that was so one would expect the content of her letter of resignation to be differently worded. The allegations all came well after that date. In the circumstances I would entirely agree with the submission of the applicant's counsel that the allegations by the claimant was an afterthought. Hence Industrial Court's conclusion that the claimant was a very experienced person dealing with hotel business having regard to her previous job as a Front Desk Manager could not be supported. It is certainly improper for the Industrial Court to equate the job of a Front Desk Manager with those of the duties of a Director of Operations of a new hotel which was still in the planning stages. Even though both jobs relate to hotel business but their duties are completely

different from each other. It is therefore highly inconceivable for the Industrial Court to make a finding in favour of the claimant in respect of this allegation. The Industrial Court had therefore committed a serious error of law when it arrived at such finding as it was not supported evidence.

In the whole circumstances of the case I allowed this application by the applicant with costs.